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So the bill (S. 3664) was passed, as follows:

S. 3664

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 13(b) of the Securities Exchange Act (15 U.S.C. 78m(b)), is amended by inserting "(1) after "(b)" and by adding at the end thereof the following:

"(2) Every issuer which has a class of securities registered pursuant to section 12 of this title and every issuer which is required to file reports pursuant to section 15(d) of this title shall—

"(A) make and keep books, records, and accounts, which accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and

"(B) devise and maintain an adequate system of internal accounting controls sufficient to provide reasonable assurances that—

"(i) transactions are executed in accordance with management's general or specific authorization;

"(ii) transactions are recorded as necessary (1) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements and (2) to maintain accountability for assets;

"(iii) access to assets is permitted only in accordance with management's authorization; and

"(iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

"(3) It shall be unlawful for any person, directly or indirectly, to falsify, or cause to be falsified, any book, record, account, or document, made or required to be made for any accounting purpose, of any issuer which has a class of securities registered pursuant to section 12 of this title or which is required to file reports pursuant to section 15(d) of this title.

"(4) It shall be unlawful for any person, directly or indirectly—

"(A) to make, or cause to be made, a materially false or misleading statement, or

"(B) to omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in the light of the circumstances under which they were made, not misleading to an accountant in connection with any examination or audit of an issuer which has a class of securities registered pursuant to section 12 of this title or which is required to file reports pursuant to section 15(d) of this title, or in connection with any examination or audit of an issuer with respect to an offering registered or to be registered under the Securities Act of 1933."

SEC. 2. The Securities Exchange Act of 1934 is amended by inserting after section 30 the following new section:

"PAYMENTS TO OFFICIALS

"SEC. 30A. It shall be unlawful for any issuer which has a class of securities registered pursuant to section 12 of this title or which is required to file reports pursuant to section 15(d) of this title to make use of the mails or of any means or instrumentality of interstate commerce corruptly to offer, pay, or promise to pay, or authorize the payment of, any money, or to offer, give, or promise to give, or authorize the giving of, anything of value to—

"(1) any person who is an official of a foreign government or instrumentality thereof

for the purpose of inducing that individual—

"(A) to use his influence with a foreign government or instrumentality, or

"(B) to fail to perform his official functions, to assist such issuer in obtaining or retaining business for or with, or directing business to, any person or influencing legislation or regulations of that government or instrumentality;

"(2) any foreign political party or official thereof or any candidate for foreign political office for the purpose of inducing that party, official, or candidate—

"(A) to use its or his influence with a foreign government or instrumentality thereof, or

"(B) to fail to perform its or his official functions,

to assist such issuer in obtaining or retaining business for or with, or directing business to, any person or influencing legislation or regulations of that government or instrumentality; or

"(3) any person, while knowing or having reason to know that all or a portion of such money or thing of value will be offered, given, or promised directly or indirectly to any individual who is an official of a foreign government or instrumentality thereof, or to any foreign political party or official thereof or any candidate for foreign political office, for the purpose of inducing that individual official, or party—

"(A) to use his or its influence with a foreign government or instrumentality, or

"(B) to fail to perform his or its official functions,

to assist such issuer in obtaining or retaining business for or with, or directing business to, any person or influencing legislation or regulations of that government or instrumentality."

PAYMENTS TO OFFICIALS

SEC. 3. (a) It shall be unlawful for any domestic concern, other than an issuer which is subject to section 30A of the Securities Exchange Act of 1934, to make use of the mails or of any means or instrumentality of interstate commerce corruptly to offer, pay, or promise to pay, or authorize the payment of, any money, or to offer, give, or promise to give or authorize the giving of, anything of value to—

(1) any individual who is an official of a foreign government or instrumentality thereof for the purpose of inducing that individual—

(A) to use his influence with a foreign government or instrumentality, or

(B) to fail to perform his official functions,

to assist such concern in obtaining or retaining business for or with, or directing business to, any person or influencing legislation or regulations of that government or instrumentality.

(2) any foreign political party or official thereof or any candidate for foreign political office for the purpose of inducing that party, official, or candidate—

(A) to use its or his influence with a foreign government or instrumentality thereof, or

(B) to fail to perform its or his official functions,

to assist such concern in obtaining or retaining business for or with, or directing business to, any person or influencing legislation or regulations of that government or instrumentality; or

(3) any individual, while knowing or having reason to know that all or a portion of such money or thing of value will be offered, given, or promised directly or indirectly to any individual who is an official of a foreign government or instrumentality thereof, or to any foreign political party or official thereof

or any candidate for foreign political office, for the purpose of inducing that individual, official or party—

(A) to use his or its influence with a foreign government or instrumentality, or

(B) to fail to perform his or its official functions,

to assist such concern in obtaining or retaining business for or with, directing business to, any person or influencing legislation or regulations of that government or instrumentality.

(b) Any person who willfully violates this section shall upon conviction be fined not more than \$10,000, or imprisoned not more than two years, or both.

(c) As used in this section—

(1) the term "domestic concern" means an individual who is a citizen or national of the United States, or any corporation, partnership, association, joint-stock company, business trust, or unincorporated organization which is owned or controlled by individuals who are citizens or nationals of the United States, which has its principal place of business in the United States, or which is organized under the laws of a State of the United States or any territory, possession, or commonwealth of the United States; and

(2) the term "interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place or ship outside thereof, and such term includes the intrastate use of a telephone or other interstate means of communication or any other interstate instrumentality.

15 SEP 1976

Calendar No. 973

94TH CONGRESS
2D SESSION

S. 3664

[Report No. 94-1031]

IN THE SENATE OF THE UNITED STATES

JULY 2 (legislative day, JUNE 18), 1976

Mr. PROXMIRE, from the Committee on Banking, Housing and Urban Affairs, reported the following original bill; which was read twice and ordered to be placed on the calendar

JULY 2 (legislative day, JUNE 18), 1976

Reported by Mr. PROXMIRE, without amendment

A BILL

To amend the Securities Exchange Act of 1934 to require issuers of securities registered pursuant to section 12 of such Act to maintain accurate records, to prohibit certain bribes, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 13 (b) of the Securities Exchange Act (15
4 U.S.C. 78m (b)), is amended by inserting "(1)" after
5 "(b)" and by adding at the end thereof the following:
6 "(2) Every issuer which has a class of securities regis-
7 tered pursuant to section 12 of this title and every issuer
8 which is required to file reports pursuant to section 15 (d)
9 of this title shall—

1 “(A) make and keep books, records, and accounts,
2 which accurately and fairly reflect the transactions and
3 dispositions of the assets of the issuer; and

4 “(B) devise and maintain an adequate system of
5 internal accounting controls sufficient to provide reason-
6 able assurances that—

7 “(i) transactions are executed in accordance
8 with management's general or specific authoriza-
9 tion;

10 “(ii) transactions are recorded as necessary
11 (1) to permit preparation of financial statements in
12 conformity with generally accepted accounting prin-
13 ciples or any other criteria applicable to such state-
14 ments and (2) to maintain accountability for assets;

15 “(iii) access to assets is permitted only in ac-
16 cordance with management's authorization; and

17 “(iv) the recorded accountability for assets is
18 compared with the existing assets at reasonable in-
19 tervals and appropriate action is taken with respect
20 to any differences.

21 “(3) It shall be unlawful for any person, directly or
22 indirectly, to falsify, or cause to be falsified, any book, record,
23 account, or document, made or required to be made for any
24 accounting purpose, of any issuer which has a class of
25 securities registered pursuant to section 12 of this title or

1 which is required to file reports pursuant to section 15 (d)
2 of this title.

3 “(4) It shall be unlawful for any person, directly or
4 indirectly—

5 “(A) to make, or cause to be made, a materially
6 false or misleading statement, or

7 “(B) to omit to state, or cause another person to
8 omit to state, any material fact necessary in order to
9 make statements made, in the light of the circum-
10 stances under which they were made, not misleading

11 to an accountant in connection with any examination or
12 audit of an issuer which has a class of securities regis-
13 tered pursuant to section 12 of this title or which is
14 required to file reports pursuant to section 15 (d) of
15 this title, or in connection with any examination or
16 audit of an issuer with respect to an offering registered
17 or to be registered under the Securities Act of 1933.”.

18 SEC. 2. The Securities Exchange Act of 1934 is amended
19 by inserting after section 30 the following new section:

20 “PAYMENTS TO OFFICIALS

21 “SEC. 30A. It shall be unlawful for any issuer which
22 has a class of securities registered pursuant to section 12 of
23 this title or which is required to file reports pursuant to sec-
24 tion 15 (d) of this title to make use of the mails or of any
25 means or instrumentality of interstate commerce (corruptly) *

4

1 to offer, pay, or promise to pay, or authorize the payment of,
2 any money, or to offer, give, or promise to give, or authorize
3 the giving of, anything of value to—

4 “(1) any person who is an official of a foreign
5 government or instrumentality thereof for the purpose
6 of inducing that individual—

7 “(A) to use his influence with a foreign gov-
8 *for the commercial benefit of the issuer,*
ernment or instrumentality or

9 “(B) to fail to perform his official functions,
10 *or to assist such issuer in obtaining or retaining business for*
to assist such issuer in obtaining or retaining business for
11 or with, or directing business to, any person or influenc-
12 ing legislation or regulations of that government or
13 instrumentality;

14 “(2) any foreign political party or official thereof
15 or any candidate for foreign political office for the pur-
16 pose of inducing that party, official, or candidate—

17 “(A) to use its or his influence with a foreign
18 government or instrumentality thereof, or

19 “(B) to fail to perform its or his official func-
20 tions,

21 *or to assist such issuer in obtaining or retaining business*
to assist such issuer in obtaining or retaining business
22 for or with, or directing business to, any person or in-
23 fluencing legislation or regulations of that government
24 or instrumentality; or

1. " (3) any person, while knowing or having reason
 2. to know that all or a portion of such money or thing
 3. of value will be offered, given, or promised directly or
 4. indirectly to any individual who is an official of a
 5. foreign government or instrumentality thereof, or to
 6. any foreign political party or official thereof or any
 7. candidate for foreign political office, for the purpose of
 8. inducing that individual, official, or party—

9. " (A) to use his or its influence with a foreign
 10. government or instrumentality, or

11. " (B) to fail to perform his or its official
 12. functions,

13. to assist such issuer in obtaining or retaining business
 14. for or with, or directing business to, any person or
 15. influencing legislation or regulations of that government
 16. or instrumentality."

17. PAYMENTS TO OFFICIALS

18. SEC. 3. (a) It shall be unlawful for any domestic con- *
 19. cern, other than an issuer which is subject to section 30A
 20. of the Securities Exchange Act of 1934, to make use of the
 21. mails or of any means or instrumentality of interstate com-
 22. merce corruptly to offer, pay, or promise to pay, or author-
 23. ize the payment of, any money, or to offer, give, or promise
 24. to give or authorize the giving of, anything of value to—

1 (1) any individual who is an official of a foreign
2 government or instrumentality thereof for the purpose
3 of inducing that individual—

4 (A) to use his influence with a foreign gov-
5 ernment or instrumentality, or

6 (B) to fail to perform his official functions,
7 to assist such concern in obtaining or retaining business
8 for or with, or directing business to, any person or in-
9 fluencing legislation or regulations of that government
10 or instrumentality,

11 (2) any foreign political party or official thereof
12 or any candidate for foreign political office for the pur-
13 pose of inducing that party, official, or candidate—

14 (A) to use its or his influence with a foreign
15 government or instrumentality thereof, or

16 (B) to fail to perform its or his official func-
17 tions.

18 to assist such concern in obtaining or retaining business
19 for or with, or directing business to, any person or in-
20 fluencing legislation or regulations of that government or
21 instrumentality; or

22 (3) any individual, while knowing or having rea-
23 son to know that all or a portion of such money or
24 thing of value will be offered, given, or promised directly
25 or indirectly to any individual who is an official of a

26 foreign government or instrumentality thereof, or to any
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1 foreign political party or official thereof or any candi-
2 date for foreign political office, for the purpose of in-
3 ducing that individual, official or party—

4 (A) to use his or its influence with a foreign
5 government or instrumentality, or

6 (B) to fail to perform his or its official
7 functions,

8 to assist such concern in obtaining or retaining business
9 for or with, or directing business to, any person or influ-
10 encing legislation or regulations of that government or
11 instrumentality.

12 (b) Any person who willfully violates this section shall
13 upon conviction be fined not more than \$10,000, or im-
14 prisoned not more than two years, or both.

15 (c) As used in this section—

16 (1) the term “domestic concern” means an indi-
17 vidual who is a citizen or national of the United States,
18 or any corporation, partnership, association, joint-stock
19 company, business trust, or unincorporated organiza-
20 tion which is owned or controlled by individuals who
21 are citizens or nationals of the United States, which has
22 its principal place of business in the United States, or
23 which is organized under the laws of a State of the
24 United States or any territory, possession, or common-
25 wealth of the United States; and

1 (2) the term "interstate commerce" means trade,
2 commerce, transportation, or communication among the
3 several States, or between any foreign country and any
4 State, or between any State and any place or ship out-
5 side thereof, and such term includes the intrastate use
6 of a telephone or other interstate means of communica-
7 tion or any other interstate instrumentality.

Calendar No. 973

94TH CONGRESS
2d Session

S. 3664

[Report No. 94-1031]

A BILL

To amend the Securities Exchange Act of 1934
to require issuers of securities registered
pursuant to section 12 of such Act to main-
tain accurate records, to prohibit certain
bribes, and for other purposes.

By Mr. Proxmire

JULY 2, Legislative day, JUNE 180, 1976

Read twice and ordered to be placed on the calendar

JULY 2, Legislative day, JUNE 180, 1976

Reported without amendment